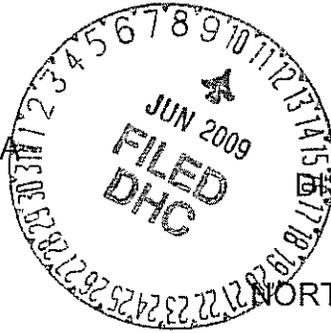


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING
COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 9

THE NORTH CAROLINA STATE BAR,

Plaintiff,

vs.

ELIZABETH J. WOLFENDEN, Attorney,

Defendant.

ANSWER

NOW COMES the defendant, Elizabeth J. Wolfenden, answering the Complaint of the plaintiff, alleges and says:

1. The allegations contained in paragraph 1 of plaintiff's Complaint are admitted.
2. The allegations contained in paragraph 2 of plaintiff's Complaint are admitted.
3. The allegations contained in paragraph 3 of plaintiff's Complaint are admitted.

FIRST CLAIM FOR RELIEF

4. The allegations contained in paragraph 4 of plaintiff's Complaint are admitted.
5. The allegations contained in paragraph 5 of plaintiff's Complaint are admitted.
6. It is admitted that prior to the time that the deed of trust was executed by Klein, the defendant did not advise Klein in writing of the desirability of seeking advice of independent legal counsel regarding the transaction concerning the deed of trust. Any remaining allegations contained in paragraph 6 are denied.

7. It is admitted that defendant did not advise Klein in writing of the desirability of seeking advise from independent legal counsel regarding the transaction wherein she would acquire a security interest in Klein's property. Any remaining allegations contained in paragraph 7 are denied.
8. It is admitted that at some point in July, 2007, that foreclosure proceedings were initiated on defendant's behalf under the deed of trust executed by Klein. Defendant is without sufficient information with which to form a belief as to the truth of the allegations contained in paragraph 8 and said allegations are therefore denied.
9. It is admitted that at some point in July, 2007, that foreclosure proceedings were initiated on defendant's behalf under the deed of trust executed by Klein. Defendant is without sufficient information with which to form a belief as to the truth of the allegations contained in paragraph 9 and said allegations are therefore denied.
10. It is admitted that at some point in July, 2007, that foreclosure proceedings were initiated on defendant's behalf under the deed of trust executed by Klein. Defendant is without sufficient information with which to form a belief as to the truth of the allegations contained in paragraph 10 and said allegations are therefore denied.
11. It is admitted that at some point and time the defendant initiated foreclosure proceedings under the deed of trust from Klein. The defendant is without sufficient information with which to form a belief as to the truth of the remaining contained in paragraph 11. As such, said allegations are denied.
12. The allegations contained in paragraph 12 of plaintiff's Complaint are admitted.
13. The allegations contained in paragraph 13 of plaintiff's Complaint are admitted.

THEREFORE, having answered the First Claim for Relief, the defendant denies violating the Revised Rules of Professional Conduct, as alleged in the First Claim for Relief.

SECOND CLAIM FOR RELIEF

14. The defendant hereby adopts, repeats, and realleges herein by reference each and all of her answers contained in paragraphs 1 through 13 of plaintiff's Complaint and hereby incorporates said answers herein by reference as if herein fully set forth.

15. It is admitted that the defendant wrote a letter dated April 18, 2008 to the Chief District Court Judge, the terms of which speak for itself, in response to a letter received from Judge Buckner dated April 14, 2008.
16. It is admitted that the April 18, 2008 letter to Judge Buckner was copied and sent to the same individuals, who were copied in the Judge's correspondence of April 14, 2008.
17. The allegations contained in paragraph 17 of plaintiff's Complaint are admitted.
18. The allegations contained in paragraph 18 of plaintiff's Complaint are denied.

THEREFORE, having answered the Second Claim for Relief, the defendant denies violating the Revised Rules of Professional Conduct, as alleged in the Second Claim for Relief.

THIRD CLAIM FOR RELIEF

19. The defendant hereby adopts, repeats, and realleges herein by reference each and all of her answers contained in paragraphs 1 through 18 of plaintiff's Complaint and hereby incorporates said answers herein by reference as if herein fully set forth.
20. It is admitted that on April 7, 2008, defendant appeared in Orange County District Court for a calendar call for the case of Klein v. Klein. It is further admitted that during that calendar call, defendant mistakenly referenced Judge Walker as the author of a letter which had been received by counsel for the parties from Judge Buckner's assistant. The remaining allegations contained in paragraph 20 are denied.
21. Defendant is without sufficient information with which to form a belief as to the truth of the allegations contained in paragraph 21 and said allegations are therefore denied.
22. It is admitted that defendant mistakenly referred to the AOC Director as the author of a letter which she and opposing counsel had received from Judge Buckner's assistant concerning the Klein case. Any remaining allegations contained in paragraph 22 of plaintiff's Complaint are denied.

23. It is admitted that the AOC Director had not written letter to the defendant. Defendant is without sufficient information with which to form a belief as to the truth of the remaining allegations contained in paragraph 23 and said allegations are therefore denied.
24. The allegations contained in paragraph 24 of plaintiff's Complaint are denied.
25. It is admitted that the defendant sent an email to opposing counsel on April 8, 2008, the terms of which speak for itself. Defendant denies any remaining allegations contained in paragraph 25.
26. Defendant is without sufficient information with which to form a belief as to the truth of the allegations contained in paragraph 26 and said allegations are therefore denied.
27. The allegations contained in paragraph 27 of plaintiff's Complaint are denied.

THEREFORE, having answered the Third Claim for Relief, the defendant denies violating the Revised Rules of Professional Conduct, as alleged in the Third Claim for Relief.

FOURTH CLAIM FOR RELIEF

28. The defendant hereby adopts, repeats, and realleges herein by reference each and all of her answers contained in paragraphs 1 through 27 of plaintiff's Complaint and hereby incorporates said answers herein by reference as if herein fully set forth.
29. The allegations contained in paragraph 29 of plaintiff's Complaint are admitted.
30. The allegations contained in paragraph 30 of plaintiff's Complaint are admitted.
31. It is admitted that Crews executed a promissory note in the amount of \$20,000.00 as a retainer for legal services of the defendant, which promissory note was secured by a deed of trust on Crew's marital residence. Any remaining allegations contained in paragraph 31 of plaintiff's Complaint are denied.

32. It is admitted that prior to the time that the deed of trust was executed by Crews, the defendant did not advise Crews in writing of the desirability of seeking advice of independent legal counsel regarding the transaction concerning the deed of trust. Any remaining allegations contained in paragraph 32 are denied.
33. It is admitted that defendant did not advise Crews in writing of the desirability of seeking advice from independent legal counsel regarding the transaction wherein she would acquire a security interest in Crew's property. Any remaining allegations contained in paragraph 33 are denied.
34. It is admitted that the defendant indicated that the majority of the legal fees would be paid out of assets awarded to Crews in the equitable distribution action. Defendant is without sufficient information with which to form a belief as to the truth of the allegations contained in paragraph 34 and said allegations are therefore denied.
35. The allegations contained in paragraph 35 of plaintiff's Complaint are admitted.
36. It is admitted that the defendant did not immediately notify Crews when her legal fees exceeded \$20,000.00. Any remaining allegations contained in paragraph 36 of plaintiff's Complaint are denied.
37. The allegations contained in paragraph 37 of plaintiff's Complaint are admitted.
38. It is admitted that defendant withdrew from representation on September 11, 2006. Defendant is without sufficient information with which to form a belief as to the truth of the allegations contained in paragraph 38 and said allegations are therefore denied.
39. The allegations contained in paragraph 39 of plaintiff's Complaint are admitted.
40. It is admitted that the invoice included charges for an appearance at a hearing at which defendant was allowed to withdraw as counsel for Crews and where other matters concerning said case were addressed by the court. Any remaining allegations contained in paragraph 40 of plaintiff's Complaint are denied.

41. Defendant admits that it is a professional duty not a legal service for an attorney to appear before a court and obtain permission to withdraw as counsel of record. It is denied that the motion to withdraw was the only matter heard by the court on September 11, 2006. Any remaining allegations contained in paragraph 41 of plaintiff's Complaint are denied.

THEREFORE, having answered the Fourth Claim for Relief, the defendant denies violating the Revised Rules of Professional Conduct, as alleged in the Fourth Claim for Relief.

FIFTH CLAIM FOR RELIEF

42. The defendant hereby adopts, repeats, and realleges herein by reference each and all of her answers contained in paragraphs 1 through 41 of plaintiff's Complaint and hereby incorporates said answers herein by reference as if herein fully set forth.
43. The allegations contained in paragraph 43 of plaintiff's Complaint are admitted.
44. It is admitted that on May 13, 2008, defendant sent an email to numerous individuals, the terms of said email speaks for itself. Any remaining allegations contained in paragraph 44 of plaintiff's Complaint are denied.
45. The allegations contained in paragraph 45 of plaintiff's Complaint are admitted.
46. It is admitted in the email dated May 13, 2008 that defendant attached what she had provided to the State Bar which she believed had properly redacted any reference to any particular client. Any remaining allegations contained in paragraph 46 of plaintiff's Complaint are denied.
47. It is admitted in the email dated May 13, 2008 that defendant attached what she had provided to the State Bar which she believed had properly redacted any reference to any particular client. Any remaining allegations contained in paragraph 47 of plaintiff's Complaint are denied.
48. The allegations contained in paragraph 48 of plaintiff's Complaint are admitted, however the defendant believed that the documents that she transmitted had properly redacted any matters which could identify the names of her clients.
49. It is admitted that defendant did not obtain consent from Klein to disclose confidential information, as the defendant did not believe it was necessary

because she thought she had properly redacted any reference to any client names.

50. It is admitted that defendant did not obtain consent from Crews to disclose confidential information, as the defendant did not believe it was necessary because she thought she had properly redacted any reference to any client names.

THEREFORE, having answered the Fifth Claim for Relief, the defendant denies violating the Revised Rules of Professional Conduct, as alleged in the Fifth Claim for Relief.

SIXTH CLAIM FOR RELIEF

51. The defendant hereby adopts, repeats, and realleges herein by reference each and all of her answers contained in paragraphs 1 through 50 of plaintiff's Complaint and hereby incorporates said answers herein by reference as if herein fully set forth.
52. It is admitted that N.C. Gen. Stat. 48-10-102 contains certain language, the terms of which speak for itself. Any remaining allegations contained in paragraph 52 of plaintiff's Complaint are denied.
53. The allegations contained in paragraph 53 of plaintiff's Complaint are admitted.
54. The allegations contained in paragraph 54 of plaintiff's Complaint are admitted.
55. It is admitted that on October 8, 2008 defendant mailed a letter to opposing counsel concerning settlement options, the terms of which speak for itself. Any remaining allegations contained in paragraph 55 are denied.
56. The allegations contained in paragraph 56 of plaintiff's Complaint are denied.
57. The allegations contained in paragraph 57 of plaintiff's Complaint are denied.
58. The allegations contained in paragraph 58 of plaintiff's Complaint are denied.

59. It is admitted that under the settlement option relating to an open adoption, that the amount for attorney fees and expenses was increased by the sum of \$20,000.00 to defray the estimated cost of attorney fees for obtaining said open adoption in another jurisdiction. Any remaining allegations contained in paragraph 59 of plaintiff's Complaint are denied.
60. It is admitted that defendant was aware of N.C. Gen. Stat. 48-10-102 which describes unlawful payments and 48-10-103 which describes lawful payments.

THEREFORE, having answered the Sixth Claim for Relief, the defendant denies violating the Revised Rules of Professional Conduct, as alleged in the Sixth Claim for Relief.

SEVENTH CLAIM FOR RELIEF

61. The defendant hereby adopts, repeats, and realleges herein by reference each and all of her answers contained in paragraphs 1 through 60 of plaintiff's Complaint and hereby incorporates said answers herein by reference as if herein fully set forth.
62. It is admitted that on March 11, 2009, defendant appeared before Judge Buckner. A copy of the transcript of said hearing is attached hereto and incorporated herein by reference as Exhibit "A", which transcript outlines defendant's comments in court.
63. It is admitted that on March 11, 2009, defendant appeared before Judge Buckner. A copy of the transcript of said hearing is attached hereto and incorporated herein by reference as Exhibit "A", which transcript outlines defendant's comments in court.
64. The allegations contained in paragraph 64 of plaintiff's Complaint are denied.
65. The allegations contained in paragraph 65 of plaintiff's Complaint are denied.
66. The allegations contained in paragraph 66 of plaintiff's Complaint are denied.

THEREFORE, having answered the Seventh Claim for Relief, the defendant denies violating the Revised Rules of Professional Conduct, as alleged in the Seventh Claim for Relief.

EIGHTH CLAIM FOR RELIEF

67. The defendant hereby adopts, repeats, and realleges herein by reference each and all of her answers contained in paragraphs 1 through 66 of plaintiff's Complaint and hereby incorporates said answers herein by reference as if herein fully set forth.
68. The allegations contained in paragraph 68 of plaintiff's Complaint are denied.
69. It is admitted that in McManaway v. LDS Family Services, Inc., et al, that the defendant made allegations of professional misconduct concerning opposing counsel in Bohannon vs. McManaway. Any remaining allegations contained in paragraph 69 of plaintiff's Complaint are denied.
70. It is admitted that defendant requested the court to discipline opposing counsel. However, said allegations were made in the case of McManaway vs. LDS Family Services, Inc., et al rather than Bohannon vs. McManaway. Any remaining allegations contained in paragraph 70 of plaintiff's Complaint are denied.
71. The allegations contained in paragraph 71 of plaintiff's Complaint are denied.

THEREFORE, having answered the Eighth Claim for Relief, the defendant denies violating the Revised Rules of Professional Conduct, as alleged in the Eighth Claim for Relief.

NINTH CLAIM FOR RELIEF

72. The defendant hereby adopts, repeats, and realleges herein by reference each and all of her answers contained in paragraphs 1 through 71 of plaintiff's Complaint and hereby incorporates said answers herein by reference as if herein fully set forth.
73. The allegations contained in paragraph 73 of plaintiff's Complaint are admitted.
74. The allegations contained in paragraph 74 of plaintiff's Complaint are denied.
75. The allegations contained in paragraph 75 of plaintiff's Complaint are admitted.

76. The allegations contained in paragraph 76 of plaintiff's Complaint are admitted.
77. The allegations contained in paragraph 77 of plaintiff's Complaint are admitted.
78. It is admitted on March 23, 2009, defendant appeared in court. A copy of the transcript of said hearing is attached hereto and incorporated herein by reference as Exhibit "B", which transcript outlines defendant's comments in court. Any remaining allegations contained in paragraph 78 of plaintiff's Complaint are denied.
79. The allegations contained in paragraph 79 of plaintiff's Complaint are denied.
80. Defendant incorporates the transcript of the hearing of March 23, 2009 attached hereto as Exhibit "B" in response to the allegations outlined in paragraph 80.
81. The allegations contained in paragraph 81 of plaintiff's Complaint are denied.
82. Defendant incorporates the transcript of the hearing of March 23, 2009 attached hereto as Exhibit "B" in response to the allegations outlined in paragraph 82.
83. Defendant incorporates the transcript of the hearing of March 23, 2009 attached hereto as Exhibit "B" in response to the allegations outlined in paragraph 83.
84. The allegations contained in paragraph 84 of plaintiff's Complaint are denied.
85. The allegations contained in paragraph 85 of plaintiff's Complaint are admitted.
86. Attached hereto and incorporated herein by reference as Exhibit "C" is the letter prepared by defendant on April 8, 2009, the terms of which speak for themselves. Any remaining allegations contained in paragraph 86 of plaintiff's Complaint are denied.
87. Defendant admits that the letter was not a motion or a pleading, but denies the remaining allegations contained in paragraph 87 of plaintiff's Complaint.

88. The allegations contained in paragraph 88 of plaintiff's Complaint are admitted.
89. The allegations contained in paragraph 89 of plaintiff's Complaint are denied.

THEREFORE, having answered the Ninth Claim for Relief, the defendant denies violating the Revised Rules of Professional Conduct, as alleged in the Ninth Claim for Relief.

TENTH CLAIM FOR RELIEF

90. The defendant hereby adopts, repeats, and realleges herein by reference each and all of her answers contained in paragraphs 1 through 89 of plaintiff's Complaint and hereby incorporates said answers herein by reference as if herein fully set forth.
91. The allegations contained in paragraph 91 of plaintiff's Complaint are denied.
92. The allegations contained in paragraph 92 of plaintiff's Complaint are denied.
93. The allegations contained in paragraph 93 of plaintiff's Complaint are denied.
94. The allegations contained in paragraph 94 of plaintiff's Complaint are denied, including subparagraphs (a), (b), (c), (d) and (e).
95. The allegations contained in paragraph 95 of plaintiff's Complaint are denied.

THEREFORE, having answered the Tenth Claim for Relief, the defendant denies violating the Revised Rules of Professional Conduct, as alleged in the Tenth Claim for Relief.

WHEREFORE, having answering the like numbered paragraphs of the plaintiff, the defendant respectfully requests that the Complaint of the plaintiff be dismissed, with prejudice, and that the North Carolina State Bar be denied any disciplinary action as a result of the allegations contained in the Complaint.

This the 10th day of June, 2009.

CRUMPLER FREEDMAN PARKER & WITT
Attorneys for Defendant

A handwritten signature in black ink, appearing to read "Dudley A. Witt", written over a horizontal line.

Dudley A. Witt
301 N. Main Street, Suite 700
Winston-Salem, NC 27101
Tel.: (336) 725-1304

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING
COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 9

THE NORTH CAROLINA STATE BAR,

Plaintiff,

vs.

ELIZABETH J. WOLFENDEN, Attorney,

Defendant.

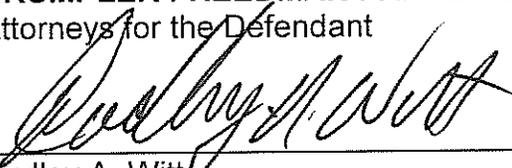
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an attorney at law licensed to practice in the State of North Carolina, is attorney for the defendant and is a person of such age and discretion as to be competent to serve process.

That on the 10th day of June, 2009, he served a copy of the attached **ANSWER** by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and its contents in the United States Mail at Winston-Salem, North Carolina.

ADDRESSEE: Carmen K. Hoyme
North Carolina State Bar
208 Fayetteville Street
Raleigh, NC 27601

CRUMPLER FREEDMAN PARKER & WITT
Attorneys for the Defendant



Dudley A. Witt
301 North Main Street, Suite 700
Winston-Salem, NC 27101
(336) 725-1304

EXHIBIT “A”

NORTH CAROLINA
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 06 CVD 1810
FILE NO. 03 CVD 2183

Marvilyn B. Bohannon
and
Cecil L. Bohannon, Jr.

Plaintiffs,

JOHNNY BRANCH
and
KRISTIN BRADLEY BRANCH,

Plaintiff Intervenors,

v.

EMILY M. McMANAWAY
and
JOHNNIE MICHAEL MURRAY,

Defendants.

This matter came on for hearing on March 11, 2009, at 9:56:22 a.m. in Orange County District Court before The Honorable Joseph M. Buckner. The following pages constitute a transcript of the audible portions of the Liberty disk provided by the Clerk of Orange County District Court.

Transcribed from the Liberty disk by:

Margaret M. Powell

Certified Verbatim Reporter

6212 Splitrock Trail

Apex, North Carolina 27539

(919) 779-0322

APPEARANCES

K. EDWARD GREENE

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Raleigh, North Carolina 27619
(For the Plaintiff Intervenors)

BETSY J. WOLFENDEN

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(919) 932-7680
(For the Defendants)

Clerk: Sarah Irby
Bailiff: Bill Clemente

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1 PROCEEDINGS (9:56:22)

2 (Equipment testing)

3 THE COURT: Mr. Greene and Ms.
4 Wolfenden, my phone may go off, and I apologize to you
5 in advance. So, just wanted to let you know about
6 that. I've got -- my wife is at the hospital; and if
7 she calls, I'll need to take the call. Everything is
8 fine, I just apologize to you and the parties in
9 advance.

10 MR. GREENE: Well, thank you for
11 coming over here.

12 THE COURT: My job.

13 MS. WOLFENDEN: I'm checking my
14 phone, Your Honor.

15 THE COURT: That's okay.

16 MS. WOLFENDEN: I don't think it's
17 okay if mine goes off.

18 THE COURT: I won't hold anybody
19 in contempt for that.

20 MS. WOLFENDEN: Well, I'll turn it
21 off.

22 THE COURT: Okay. I couldn't get
23 in that door, that's locked for some reason, but I came
24 in this way. And I have e-mailed the county, so maybe
25 they will provide the Judge with a key to the

Bohannons, Branches v. McManaway & Murray - 3/11/09

1 courtroom; otherwise, we can just keep everybody out.
2 Okay. This is my first time in this room, so I
3 apologize if I'm a little disoriented.

4 Okay. Anybody want to give me a
5 preview of why we're here?

6 MS. WOLFENDEN: Well, I think I
7 should begin, if it's okay with Mr. Greene only, Your
8 Honor, because I have a Motion to Continue before the
9 Court, and the basic premise being my Motion to
10 Continue is that I have not had time to prepare for
11 today's hearing. I was not notified, Your Honor, that
12 there was a change in calendar call. Mr. Greene was.

13 Then, according to Mr. Greene, his
14 Motion was set for hearing today. It wasn't until I
15 called Sarah that Sarah let me know that it was on for
16 hearing. I had not received a proper Notice of Hearing
17 from Mr. Greene, nor had he complied with the local
18 rules when he put his Motion or somehow got it before
19 Your Honor at calendar call.

20 while I did stay up-- let's see,
21 where are we--Monday night until 3:00 a.m responding to
22 his Motion in written form, if Your Honor will
23 remember, I had sent you a letter on February 13th
24 asking you for scheduling assistance. Your Honor did
25 not call me back.

Bohannons, Branches v. McManaway & Murray - 3/11/09

1 In my letter, I specifically said
2 that I wanted to have my own court reporter here and at
3 all future hearings in this matter to record these
4 proceedings. I was not able on such short notice to
5 get my court reporter here.

6 And, in addition, Your Honor, I
7 also have -- and I know this is a sensitive matter, and
8 it really pains me to bring it before the Court today
9 because I feel I've taken every step to protect Your
10 Honor as well as my client, but I think that the fact
11 can no longer be ignored that Your Honor is aware that
12 I went to Jimmy Woodall on May 30th and told Jimmy
13 Woodall or had a discussion with Mr. Woodall about Your
14 Honor's conduct in the court room and outside of the
15 court room.

16 And it is my understanding that you
17 became aware of that conversation through Judge Fox;
18 and after you became aware of that conversation, even
19 though you had recused yourself from all of my cases,
20 Your Honor, on March 14th, 2008, you then reassigned
21 yourself to all of my cases after that.

22 And I would contend, Your Honor,
23 that because of your awareness of my conversation that
24 I did have with Jimmy Woodall that you are biased
25 against me, something that I certainly understand.

Bohannons, Branches v. McManaway & Murray - 3/11/09

1 whether or not you agree with the information that I
2 gave to Jimmy Woodall, the fact is I did give him the
3 information, Your Honor is aware of it.

4 Any outsider, any objective outside
5 person, I believe any Judge, would recognize that that
6 bias is harmful to my clients, and I would contend
7 standing here today, Your Honor, that since you
8 reassigned yourself to my cases, you have failed to
9 assist me whenever I have requested scheduling
10 assistance.

11 And, in fact, unfortunately, one of
12 the times that you failed to assist me has now ended up
13 with me having a charge against me, as Your Honor is
14 aware, for criminal contempt and that we will be
15 hearing that tomorrow.

16 But that I would, once again, ask
17 Your Honor to do the right thing and to please recuse
18 yourself from my cases. And if Your Honor is unwilling
19 to do that today, then that is something that I feel I
20 have no other choice but to take that up to the Court
21 of Appeals.

22 THE COURT: Okay. I understand your
23 argument. I'm not going to recuse myself from the
24 cases; nor up until this point did I know anything
25 about a conversation you had with Mr. Woodall, the

Bohannons, Branches v. McManaway & Murray - 3/11/09

1 District Attorney.

2 I will tell you, Ms. Wolfenden,
3 that when you announce in open court you have filed
4 your complaint with Judicial Standards against me, I
5 thought initially that that was a basis to recuse
6 myself and I did so.

7 After consulting with Judicial
8 Standards, they said in fact that was not. And I'm
9 going to meet my responsibilities to hear any cases
10 that are scheduled before me. So, I'm going to hear
11 the case.

12 MS. WOLFENDEN: Well, I think then
13 that I have an obligation to tell Your Honor that I did
14 it go to Jimmy Woodall, that I did tell him, Your
15 Honor, that I felt that you were not fit to be on the
16 bench; that I did tell Jimmy Woodall that the word on
17 the street was that Your Honor was, unfortunately,
18 using illicit drugs.

19 I also told Jimmy Woodall that I
20 was very concerned that post 2002 when you settled the
21 sexual harassment lawsuit with Peggy Riley that Your
22 Honor continued to engage in an illicit sexual
23 relationship.

24 It's out. Now you know this is
25 what I told ---

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1 THE COURT: Ms. Wolfenden, I want
2 you to know ---

3 MS. WOLFENDEN: Yes, sir?

4 THE COURT: --- that I'm going to
5 hold you accountable for everything that you say in a
6 public and private forum, and that I am not going to
7 reserve my official sanctions against you, and you have
8 just committed what I consider an act of defamation
9 against me.

10 MS. WOLFENDEN: That's fine, Your
11 Honor.

12 THE COURT: Be very careful.
13 If I hear any more talk about this
14 in this forum, I intend to hold you in direct criminal
15 contempt for disrupting the proceeding against me, the
16 hearing to be heard today. Do you understand?

17 MS. WOLFENDEN: I absolutely
18 understand, Your Honor, and I am prepared to defend
19 myself.

20 THE COURT: Well, you have been
21 warned, and I want you to understand direct criminal
22 contempt may mean immediate sanction for you. Do you
23 will understand?

24 MS. WOLFENDEN: I'm prepared to go
25 to jail, Your Honor, if that is what Your Honor orders.

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1 THE COURT: Okay. Let's begin
2 hearing this case.

3 MS. WOLFENDEN: Okay. I would,
4 once again, just register my objection to
5 proceeding ---

6 THE COURT: Noted. Thank you.

7 MS. WOLFENDEN: --- this morning,
8 it is not properly noticed for hearing.

9 THE COURT: Okay. Why are we
10 here?

11 MR. GREENE: Your Honor, I guess
12 it's probably my turn to go first because I gather the
13 Court has denied the Motion to Continue.

14 And so there are two Motions on
15 that are -- really, only one Motion is set for today
16 and that's our Motion to Stay any hearing on Ms.
17 Wolfenden's Motion.

18 She has two Motions. One, to send
19 this case back to Nevada; and the second Motion is to
20 -- a second Rule 60(b)(4) Motion. And we've asked the
21 Court at the calendar call -- and I must say that the
22 way I found out that the snow day calendar call had
23 been changed is that I called the Court and found out,
24 I didn't get an e-mail, either.

25 So, anyway. And the Court set only

Bohannons, Branches v. McManaway & Murray - 3/11/09

1 our Motion for hearing, so we're not prepared on her
2 Motion, but we are prepared on our Motion.

3 Do you have the file, Your Honor,
4 or should I ---

5 THE COURT: I do.

6 MR. GREENE: Okay. And I'll be
7 glad to hand up, it's my Motion, and that might be a
8 way to deal with this first. Well, do you have the
9 file there, Judge, do you see my Motion to Stay? Hand
10 it up.

11 THE COURT: Thank you.

12 MR. GREENE: Your Honor, this
13 statute which I have handed up to the Court is 1-294,
14 and it is a very simple in its statement and its
15 application, "When an appeal is a perfected as provided
16 by this Article, it stays all further proceedings in
17 the court below upon judgment appealed from, or upon
18 the matter embraced therein."

19 As the Court is aware, when the
20 Court, this Court, denied Ms. Wolfenden's first, if I
21 may call it, Rule 60(b) Motion and allowed my clients,
22 who are the Branches, to intervene into this action,
23 this custody action, she timely appealed to the North
24 Carolina Court of Appeals.

25 And this statute, in my opinion,

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1 and the case law is very clear that it (divests) this
2 Court of any jurisdiction to adjudicate any matters
3 embraced within this custody action. That this matter,
4 her Motion, should be stayed until such time as the
5 Court of Appeals adjudicates the merits of her first
6 Rule 60 Motion.

7 And I can stop there, Your Honor, I
8 can talk about some Court of Appeals cases that address
9 this, but I will be glad to answer any questions that
10 the Court may have.

11 THE COURT: Ms. Wolfenden?

12 MS. WOLFENDEN: Yes, sir.

13 Your Honor, there is case law that
14 says that Mr. Greene is quite wrong. And, if I may
15 approach, the case is *Rosero v. Blake*. And I would
16 also draw Your Honor's attention to a Response that I
17 have filed. Do you just mind if I just hand this to
18 the Judge?

19 MR. GREENE: Yes, fine. Sure.

20 MS. WOLFENDEN: Thank you.

21 Although Mr. Greene in his Motion
22 cites the first part of the statute, he actually fails
23 to site the second part, and it is the second part of
24 that statute that is addressed in *Rosero v. Blake*, Your
25 Honor, and that is the part that comes after the

Bohannons, Branches v. McManaway & Murray - 3/11/09

1 semi-colon.

2 "That the Court below may proceed
3 on any other matter included in the action and not
4 affected by the judgment appealed upon."

5 If Your Honor will take a moment
6 and read *Rosero v. Blake*, you will understand or the
7 Court would see--excuse me, that was a
8 misunderstanding, I did not mean for that to come out
9 that way--the Court will see that the fact pattern in
10 *Rosero v. Blake* very clearly sets forth when a stay
11 should be implemented.

12 And there is nothing in that fact
13 pattern in *Rosero v. Blake* that corresponds to the fact
14 pattern that is before the Court today.

15 In *Rosero v. Blake*, the Court had
16 actually taken testimony and made a custody -- a
17 custody ruling. They had done a best-interest
18 determination, they had awarded the Plaintiff, I
19 believe it was, primary custody of the child, the
20 Defendant had secondary custody of the child.

21 None of that has ever happened in
22 this case, none of that happened on November 24th.

23 But more importantly, Your Honor,
24 the two Motions that I currently have before the Court
25 at this time are completely dispositive of this case,

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1 and that is because the Motions that are before the
2 Court--not at this time because I'm not prepared to
3 argue that today, but would like to argue them on March
4 20th or whenever we reconvene--is that this Court does
5 not have subject matter jurisdiction. It does not have
6 subject matter of jurisdiction because Clark County,
7 Nevada, still, my client is arguing, still has subject
8 matter jurisdiction.

9 This is an important issue, it's
10 dispositive to this case, and it should be heard now so
11 that any unfavorable ruling could also be taken up to
12 the Court of Appeals at the same time the Court of
13 Appeals is hearing what happened in this court on
14 November 24th, 2008.

15 I think the facts are very clear
16 that it is only when the Court has made a custody
17 determination that it should not make another custody
18 determination while the first determination is up on
19 appeal. That is not the facts at all.

20 What we heard on the 24th, Your
21 Honor, was a Rule 60 Motion having nothing to do with
22 custody, it had to do with the propriety of the entry
23 of that Order.

24 As Your Honor will remember, I also
25 had a Motion to Recuse before Your Honor having nothing

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1 to do with custody. Your Honor allowed the Plaintiff
2 Intervenors to intervene. But, again, that had nothing
3 to do with custody.

4 And, more importantly, the two
5 Motions that I would like to be heard on have nothing
6 to do with custody. And, moreover, they have nothing
7 to do with what happened on November 24th, 2008.

8 The Motions that I would like to be
9 heard on, because they are dispositive, would render
10 the appeal that's currently going up to the Court of
11 Appeals, or is up before the Court of Appeals, moot.

12 Therefore, in the interest of
13 judicial economy, it would make sense to hear those
14 Motions now so that we only have one appeal going up to
15 the Court of Appeals.

16 The way it stands, Your Honor, now
17 we're going to have three. I am definitely, you know,
18 with an unfavorable ruling, would appeal what's
19 happening in this courtroom today -- well, I guess --
20 and so we would have two going up to the Court of
21 appeals. It just makes -- it makes no sense, it's
22 going to drive up everybody's legal fees, and I would
23 say that the case what is directly on point, and that
24 Mr. Greene's Motion should be denied; that we should
25 set my Motions for hearing on March 20th when I can

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1 come in and have a court reporter record the
2 proceedings.

3 Thank you, sir.

4 THE COURT: Thank you.

5 Your Motion for a Stay is allowed.

6 will you prepare that Order?

7 MR. GREENE: I will.

8 THE COURT: Provide a copy to Ms.

9 Wolfenden.

10 Ms. Wolfenden, you will have five
11 days to respond to the proposed Findings and
12 conclusions and Disposition before I sign it.

13 MS. WOLFENDEN: Your Honor, if I
14 may ask Madame Clerk, it would be great if before I
15 left here today if she would just give me a CD so that
16 I can prepare the appeal for my client, I would
17 appreciate it.

18 THE COURT: You mentioned, just as
19 a housekeeping matter, is something else in this case
20 on the calendar at the end of the month set? Just so
21 -- while we're all here.

22 (THE CLERK): Not now, Your Honor.

23 THE COURT: So, nothing now on the
24 20th. Okay. Thank you.

25 MR. GREENE: Thank you, Your Honor.

Bohannons, Branches v. McManaway & Murray - 3/11/09

1 (whereupon, the hearing was
2 adjourned at 10:21:51)

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

C E R T I F I C A T E

I, Margaret M. Powell, Certified Verbatim Reporter and Notary Public, do hereby certify that the hearing before The Honorable Joseph M. Buckner in the matter of *Bohannon, Bohannon, Branch, Branch v. McManaway and Murray* was transcribed by me from the Liberty disk provided to me by the law firm of Betsy J. Wolfenden on March 13, 2009, and that the foregoing pages constitute a true and accurate record of the audible portions of the Proceedings from said Liberty disk.

I further certify that the persons were present as stated in the Appearances.

I further certify that I am neither counsel for, related to nor employed by any of the parties to this action in which this matter was heard; and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

March 14, 2009

Margaret M. Powell, CVR

My Commission expires: 4/12/12

Notary Public No. 19970780127

Margaret M. Powell, CVR - (919) 779-0322

EXHIBIT “B”

1 STATE OF NORTH CAROLINA
2
3 COUNTY OF ORANGE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 07 CVD 1260

4
5
6
7 _____]
8 LYONS,]
9 Plaintiff]
10 V.]
11]
12 LYONS,]
13 Defendant]
14 _____]

T R A N S C R I P T

MARCH 23, 2009

15
16
17 The above-captioned case coming on for hearing on March 23
18 2009, in the District Court of Orange County, Hillsborough,
19 North Carolina, before the Honorable Beverly A. Scarlett,
20 Judge Presiding, the following proceedings were had, to wit:

21
22
23 **APPEARANCES:**

24
25 For the Plaintiff Leigh Peek
26
27 For the Defendant Betsy Wolfenden
28

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2
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4
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N/A

[END OF PAGE]

1 [The hearing commenced at 10:06 a.m., March 23, 2009.]

2 THE COURT: I think this is my first time
3 hearing anything in this matter; is that right?

4 MS. WOLFENDEN: Yeah.

5 THE COURT: Okay.

6 MS. WOLFENDEN: We were before you, Your Honor,
7 if you will remember, in February. The hearing did not take
8 place. My client drove up from South Carolina and took the
9 day off from work. Leigh said something in chambers about ---
10 -

11 THE COURT: Oh, okay. All right. But, no
12 hearing in the courtroom?

13 MS. WOLFENDEN: No; and, so the way we left it,
14 Your Honor, my understanding is when we had walked out of the
15 courtroom you had instructed Madam Clerk to put the matter
16 back on the March calendar -- calendar call. So, apparently
17 what happened, Your Honor -- and maybe I should back up even
18 before that. On June 4th, when Ms. Peek was in front of Your
19 Honor, she actually asked on the record that all matters in
20 this case be peremptorily set in the future and Your Honor had
21 agreed to that. So, apparently what happened after that, Your
22 Honor, is that the case did go back on the March 2nd calendar.

23 If you will remember, March -- the March 2nd calendar call was
24 snowed out.

25 THE COURT: Right. We had to move over to

1 Wednesday.

2 MS. WOLFENDEN: Right. Judge Buckner reset it.
3 Apparently he informed Ms. Peek, did not inform me, and by the
4 time I found out from Sarah it was too late for me to make it
5 to calendar call that morning or to send a representative;
6 and, so that day, Your Honor, I believe I had four cases on
7 the calendar with Leigh Peek as opposing counsel in all of
8 them, and apparently she chose court dates in a couple of
9 cases that she wished to proceed in but not in other cases
10 that she did not wish to proceed in and in fact that I wished
11 to proceed in, and then after calendar call, she did not
12 provide me with any notice of hearing in this case; and, if
13 Your Honor will take a look in the court file, you will --
14 that will be confirmed. There is no notice of hearing in
15 there at all for today's date.

16 I sent Ms. Peek an e-mail on Tuesday of last week,
17 March 17th, asking her specifically to, "Please serve me
18 immediately with notices of hearing for any cases of mine you
19 scheduled at March calendar call; thank you," and heard
20 nothing back. It was not until my paralegal sent an e-mail to
21 Sarah on Friday, and then Sarah was kind enough to e-mail us
22 back, and I got that e-mail this weekend that we found out
23 that it was in fact confirmed to be before the Court this
24 morning.

25 My client lives in South Carolina. He had to come

1 to court twice in February, once on this case, the hearing
2 that didn't, you know, result to be a hearing, and then
3 another time because he went before the Court in South
4 Carolina and had his child support reduced because Ms. Lyons
5 had apparently provided false information to the Court ----

6 MS. PEEK: Objection, Your Honor.

7 MS. WOLFENDEN: He cannot be here ----

8 THE COURT: Sustained.

9 MS. WOLFENDEN: ---- on such short notice. I
10 need him to be here. We have a number of motions pending
11 before the Court, all pertaining to attorney's fees, and I
12 would ask that Your Honor, since it was Leigh's motion to ask
13 for a peremptory hearing in this case -- makes perfect sense
14 to me. It's, you know, a good thing to do when we have an
15 out-of-town client. I don't want to put his job in jeopardy.
16 He pays her child support. I don't think she wants him -- his
17 job to be in jeopardy. What I'm asking is that we -- I have
18 an opportunity to check with my client's schedule. He also, I
19 believe, just had a newborn -- a baby born, and so ----

20 THE COURT: And how recently do you think
21 that is, ma'am?

22 MS. WOLFENDEN: That is -- I don't know if Ms.
23 Lyons knows? No. Okay. I ----

24 UNKNOWN FEMALE: [Indecipherable].

25 THE COURT: Maybe a month, two, six, ten?

1 MS. WOLFENDEN: Oh, it's either pending -- it's
2 like the baby is born any day or the baby was just born.

3 THE COURT: All right.

4 MS. WOLFENDEN: So, I'll need to check, and when
5 I come back to court next time, I'll make sure we have that
6 information. I'm just asking that I have an opportunity to
7 consult with his schedule so we can consult with her client's
8 schedule, and we can pick a date in April -- April -- yes, I
9 think at this point April would make the most sense, so his
10 job is not in jeopardy and to give him a chance to assist his
11 wife with the -- his newborn.

12 THE COURT: Sure.

13 MS. WOLFENDEN: That's all I'm asking, Your
14 Honor. I -- I -- I don't. I don't know how these things
15 happen. I can say that whenever I go to court and opposing
16 counsel is not there I believe that the North Carolina Rules
17 of Civil Procedure require me to notice. It -- it's -- it's
18 the law. It's courtesy. If you remember last time I was
19 before you, I said I did not understand the way Ms. Peek was
20 proceeding. I didn't understand this way of everything is a
21 gotcha moment, why she would pick a court date at calendar
22 call and then not take two seconds to just send me anything.
23 A formal notice of hearing is required, but just the courtesy
24 of, "Hey this is what I did," but she didn't and then for me
25 to specifically ask her -- ask her -- it's her obligation to

1 inform me. It's -- it's -- it's not up to me to be going and
2 asking around, you know, what she did at calendar call.

3 THE COURT: I just have ----

4 MS. WOLFENDEN: I think I've said enough ----

5 THE COURT: I just have only one question
6 about what you said, Ms. Wolfenden.

7 MS. WOLFENDEN: Yes. Yes.

8 THE COURT: Everything else I understand
9 totally. Now, it's your belief that Judge Buckner contacted
10 Ms. Leigh Peek directly regarding a change in calendar call?
11 That -- that part ----

12 MS. WOLFENDEN: Sure. I can only testify to
13 what I've been told from other attorneys. Apparently what
14 happened was -- and Your Honor, you know, obviously can ask
15 around and make your own confirmation. What I have been told
16 from a number of my colleagues was that after March 2nd, Judge
17 Buckner sent an e-mail out to some attorneys but not others.
18 I also was told that Mindy made phone calls to some attorneys
19 but not others. I was not notified of the change in calendar
20 call. I know that my colleague, Susan Franklin, was not
21 notified. She had a case on the court calendar. I believe
22 Peggy Randell [phonetic] was not notified but found out
23 through someone else. What I heard -- again, I wasn't there -
24 - was that it was quite a mess because some attorneys were
25 notified; others weren't. I know that Mindy has this master

1 e-mail list, Your Honor, that we used to all receive court
2 calendars on. I don't know if my e-mail address has
3 specifically been removed from the master list ----

4 THE COURT: Actually the e-mails aren't
5 going out.

6 MS. WOLFENDEN: They're not going out?

7 THE COURT: Yeah, as I understand it, the
8 mass e-mails are not going out to anyone because we had a
9 couple of things going on. Of course, the birth of Judge
10 Buckner's, now we know, daughter was coming up and we weren't
11 sure how that was going to shake out; and, then two, I know I
12 have a lot of mandatory travel coming up. One, I just
13 finished in DC, and at the end of April I'm going to
14 Louisiana. We hadn't had any of that shaken out at the time,
15 so I do know shortly after the first of the year the mass e-
16 mails stopped mainly because we weren't sure what we had to
17 work with ----

18 MS. WOLFENDEN: Right.

19 THE COURT: ---- and weren't sure of what
20 changes would be necessary; but, that's as much as know and
21 what I can attest to.

22 MS. WOLFENDEN: That's fine, and I try -- you
23 know, obviously things change all the time. I was surprised
24 on a personal level that when he sent out the e-mail, that he
25 didn't use that header to make sure that all of us who are on

1 the list would get the e-mail. He didn't. That was his
2 choice, but it was of concern to me because I had as many
3 cases as I did and also because I had specifically sent him
4 letters in two of those cases asking for scheduling assistance
5 prior to calendar call, had not heard back from him, so it put
6 my clients, you know -- again, it's not about me. It's about
7 my clients. Me, I'm doing my best to represent my clients,
8 and -- and I can't do that if I'm not at calendar call having
9 any input with the dates, and I certainly can't do that if Ms.
10 Peek is not going to extend to me the professional courtesy of
11 telling me about the court dates that she picked when I wasn't
12 present.

13 THE COURT: All right. Thank you, ma'am.

14 Ms. Peek.

15 MS. PEEK: Your Honor, of course my
16 client's opposed to this motion to continue. For the record,
17 I would like the Court to know that it was filed this morning
18 at 8:29 and it was handed to me when I came into the
19 courtroom. After my client arrived, I did give her an
20 opportunity to read the motion. This matter was placed on the
21 March calendar by Your Honor, and then subsequent to that I
22 filed a separate notice of hearing for the attorney's fees
23 motion, which I did serve properly upon Ms. Wolfenden, and
24 that would appear in the file. The March calendar call did
25 not take place on March 2nd due to snow.

1 THE COURT: Right.

2 MS. PEEK: It was recalendared to March
3 4th. The Honorable Judge Buckner did not inform me of the
4 makeup date for calendar call nor did anyone else in the
5 courthouse. I took it upon myself to make a determination of
6 when the calendar call was rescheduled for, and I ----

7 THE COURT: And -- and help me understand.
8 So, you're saying to this Court you proactively took some sort
9 of step or action to sort of educate yourself as to when that
10 makeup day would be?

11 MS. PEEK: Yes, ma'am. I called another
12 attorney and asked her if she knew when it had been
13 rescheduled for and she did know, and she told me it was on
14 the 4th. That was on the 3rd, and then actually I -- it was
15 the morning of the 3rd. I kind of assumed it would be the 3rd,
16 so that morning before I left the house I called somebody's
17 cell phone and said, "Do you know when calendar call is?" and
18 she said, "Tomorrow," and I said, "Okay," and then when I came
19 into the office I checked again, and it certainly was at nine
20 o'clock on the next day, and I believe the reason I checked
21 was because I wanted to know what court we would be in.

22 THE COURT: Right; and, what did you do to
23 check?

24 MS. PEEK: I called the clerk's office.

25 MS. WOLFENDEN: Which I did as well, Your Honor.

1 THE COURT: Okay.

2 MS. PEEK: And then -- again, I don't know
3 anything about it being too late for her to attend. I know
4 Ms. Wolfenden did not attend the calendar call. I do know
5 that we had four cases on that March calendar call and that
6 two of them were scheduled for hearing and two of them were
7 held open, and I had not notified Ms. Wolfenden about any of
8 them. So, number six says, "Plaintiff's counsel picked court
9 dates for the cases she wanted to be heard, including this
10 case." If she knows that to be true -- I would assumed that
11 she's checked and figured out that two of them were set for
12 hearing, one of which she appeared for hearing on November the
13 -- on March the 11th, and the other one is today and she's
14 here.

15 I did not give her an additional notice of hearing
16 for this court date because I don't know that -- I mean, I
17 don't have to do that. She was supposed to be the same place
18 I was. If she had contacted me in a way that I can
19 communicate with her, I would have responded; and, I'm sure
20 Ms. Wolfenden's aware that my e-mail is blocked for her, so an
21 e-mail that I have -- we can go to my office, but you're not
22 going to find it in any archived or any other e-mail because
23 my e-mail will not accept hers.

24 THE COURT: Right.

25 MS. PEEK: She's been communicating with my

1 staff pretty much sense the November 21st filing of the first
2 Superior Court action against me personally ----

3 THE COURT: Right.

4 MS. PEEK: ---- and I just -- I'm sorry, I
5 didn't get an e-mail. Had I gotten a fax from her, which is
6 how we've been communicating other than my mail, I would have
7 responded to it, but I didn't get that, and of course since I
8 didn't get it I didn't reply.

9 The Defendant does live out of state, and he may
10 well may -- have to make arrangements with his employer before
11 he's allowed to take off work, and he was here yesterday, Your
12 Honor, for visitation this weekend. I mean, I -- I frankly
13 don't think that I set it on this day to -- for the
14 convenience of the Defendant, but it would have been non-
15 convenient for him to stay. I think I set it for today
16 because it was Your Honor's case, and this was the ----

17 THE COURT: Right.

18 MS. PEEK: ---- day that was available. If
19 I recall correctly, I set all of my Starlett [phonetic]
20 matters -- I think there were seven of them originally set for
21 this day, and I think that's why we're here today. It's just
22 the date that was available. So, yes, I did pick it, but I
23 only picked it because I was there and Ms. Wolfenden was not
24 there and it was the date that was available, but I do think
25 that since he was here yesterday, you know, he could have

1 certainly stayed. I'm sorry, I just don't find the Rule of
2 Civil Procedure that says that once I have properly noticed it
3 for calendar call I have to issue a new notice of hearing
4 because Ms. Wolfenden declines to go and or declines to check
5 with the clerk afterwards.

6 I also haven't received anything about rescheduling
7 the matters that I held open, you -- and the reason I held
8 those two matters open was, one, I had gotten a letter from
9 her wanting to set it after some depositions, so I really
10 didn't feel like I could set that one. The other one I had
11 co-counsel in, and he wasn't there either, so I just held that
12 one open. I mean, it wasn't like I was picking and choosing.

13 THE COURT: I understand.

14 MS. PEEK: And -- and my client, Your Honor
15 -- in this case, we've come -- we came June the 4th and Ms.
16 Wolfenden and her client neither were here and we filed, in
17 November, a motion to change custody -- for temporary custody,
18 and we filed that motion for attorney's fees along with it,
19 and that's what came on to be heard in February, and it was at
20 that setting that at the call of the calendar, before we could
21 get anything done, Ms. Wolfenden indicated [indecipherable]
22 with this attorney's fees motion that she'd like a continuance
23 in that matter so that she could prepare [indecipherable]
24 motion and that's when we went into chambers ----

25 THE COURT: Right.

1 MR. PEEK: ---- and I believe that a
2 referee was appointed, and I think it was a -- a man named Mel
3 -- I don't remember his last name.

4 THE COURT: Wright.

5 MS. PEEK: Mel Wright. It was something
6 [indecipherable] ----

7 THE COURT: Right.

8 MS. PEEK: ---- and nothing's really come
9 of that, and then I received a letter from Ms. Wolfenden
10 indicating that in fact I was unprofessional and unethical and
11 that I should pay her \$600 in attorney's fees for her not
12 coming on June the 4th; and, you know, my client just wants
13 this thing over with.

14 THE COURT: Right.

15 MS. PEEK: She came on June 4th. Ms.
16 Wolfenden didn't come. Her client didn't come. She came.
17 She shouldn't have to pay me for that. We came in February.
18 Ms. Wolfenden stood up and she asked for a continuance so that
19 she could file a sanction motion. Nothing happened that day,
20 but my client was here and, you know, that's the -- you know,
21 the good news in the case is that after that court date, Ms.
22 Wolfenden faxed me some information about contacting a
23 therapist in South Carolina, and after fully interviewing the
24 therapist, the visitation has picked back up pursuant to the
25 mediated agreement that Ms. Redline [phonetic] mediated in

1 custody mediation. So, that's the good news, you know. The
2 bad news is that of course the agreement isn't exactly what we
3 want. We want it to say some more specifics, you know. If
4 Mr. Lyons was here maybe we could have a hearing on, you know,
5 what the pickup times are going to be and where the pickup
6 places are going to be so that there's not any questions, but
7 he's not, but I can tell you that my client wants two things.
8 One, she wants not to have to keep coming back here.

9 THE COURT: Sure.

10 MS. PEEK: And, secondly, she doesn't want
11 to be here again without having her attorney's fees
12 reimbursed. So, in the event that the Court is inclined at
13 all to grant Ms. Wolfenden's motion to continue, I'd like for
14 the Court to know that of course we have to ask for attorney's
15 fees for coming yet another time.

16 MS. WOLFENDEN: And I would of course ask for
17 attorney's fees, Your Honor, because I would submit to the
18 Court that Ms. Peek has completely wasted my client's time. I
19 have no idea why I'm here. The North Carolina Rules of Civil
20 Procedure require five days notice for any motion. That's
21 right there's a notice of hearing probably in the court file.
22 It's for calendar call. I very much appreciate Ms. Peek
23 giving me five days notice to tell me to go to calendar call.
24 There is no notice of hearing for the court hearing today. I
25 -- it's very unfortunate that calendar call turned out to be

1 the mess that it was. It had nothing to do with me. I'm glad

2 ----

3 THE COURT: Or any of us.

4 MS. WOLFENDEN: What?

5 THE COURT: Or any of us. It was due to the
6 snow.

7 MS. WOLFENDEN: I concur completely. I'm glad
8 Leigh called; so did I. Leigh must have called a little bit
9 earlier than I did. By the time I called, I couldn't make it.
10 Again, it was my understanding -- if I have to bring the e-
11 mail into court I'd be, you know, more than happy to do that.
12 I'm -- I'm not sure that's entirely relevant. This is a
13 matter of the law and this is the matter of professional
14 courtesy. For as long as I have been practicing law in this
15 district, if someone goes to court at a calendar call and the
16 other party is not there, number one, what would usually
17 happen is that the Judge will hold the matter open. That's
18 apparently what Judge Buckner did in the other two cases, but
19 in these two I wasn't there. It appears that Leigh insisted
20 on court dates and then turned around and did not provide me
21 with the information for those two court dates.

22 Regarding me sending her e-mail to her e-mail

23 account, I have an e-mail from your paralegal informing me
24 that every e-mail I send to Ms. Peek goes directly to her
25 Blackberry, so when I send her an e-mail if it's not going to

1 her computer in the office, pursuant to what her paralegal
2 told me, she's receiving each and every one of those e-mails
3 on her Blackber -- Blackberry. When I sent her an e-mail
4 specifically requesting, "Please be courteous, let me know
5 about any court dates coming up," and she just chooses to
6 ignore that. I'm sorry, I think that's unconscionable.

7 MS. PEEK: With regards to my Blackberry,
8 though, I've never had a hearing on my Blackberry before. I
9 would like the Court to be made aware that I have a new
10 computer. I can't remember when it was installed, but I think
11 it was about two and a half, three weeks ago. I think my
12 Blackberry is here. I could find it, and you'll see that I
13 have not gotten any e-mail on my Blackberry since the new
14 computer was installed because it hasn't been updated to the
15 Blackberry, so I'm not getting any e-mail on my Blackberry,
16 and I think that maybe everyone here might know that while it
17 does work I love it. I love the Blackberry to get e-mail, and
18 it does not block Ms. Wolfenden. The Blackberry did not, but
19 it doesn't work with the new computer yet, so I haven't been
20 able to ----

21 THE COURT: Haven't been able to ----

22 MS. PEEK: I haven't been able to do that,
23 and the first I've seen of this was today, and I'm a little
24 surprised that it came in the e-mail because really since
25 November 24th, we've been communicating by fax or letter, so -

1 ---

2 MS. WOLFENDEN: Well, I would point out to the
3 Court that if she didn't get it I would have gotten a message
4 that she didn't, and I did not get any error message bumping
5 that back; but, again it's so easy for her to go to court and
6 pick this court date without telling me. It's so easy for her
7 to bring her client into court, who lives locally or who lives
8 in Durham County, which is relatively locally. It completely
9 disadvantages me and my client. We don't have notice. The
10 law requires proper notice and that notice is not in the court
11 file.

12 MS. PEEK: Your Honor, I'd like to address
13 one issue and that's professional responsibility. I think
14 we've all been sort of in this boat in March because I think
15 we all have the professional responsibility to find out when
16 that calendar call was, and if we couldn't be there, I think
17 it was our professional responsibility to have somebody there,
18 and if that didn't happen, certainly before today, which I
19 think is the 23rd, it would have been reasonable to exercise
20 your professional responsibility to find out what happened
21 with your cases. It is not rocket science. Ms. Irby
22 [phonetic] and actually somebody in that juvenile court office
23 is generally always available to tell you what happened at
24 calendar call. I do not understand why it is always my
25 responsibility to do Ms. Wolfenden's lawyering.

1 MS. WOLFENDEN: Because you're opposing counsel,
2 Leigh, and I would do the same for you, and I would like you
3 to tell the Court when I have never not done that for you. It
4 is -- you are the attorney. Sarah is not the attorney. You
5 go to calendar call. You pick two court dates you want. You
6 ignore the hearings that I want, and then you don't tell me
7 just so that we can come here and completely waste the Court's
8 time.

9 MS. PEEK: Your Honor ----

10 MS. WOLFENDEN: You are the attorney. It is
11 your obligation to follow the law. It is your obligation to
12 be professionally responsible to me, just as it is mine to be
13 professionally responsible to you. You came into court last
14 time. You complained to the Judge that two of my clients are
15 suing you. This is why. I would submit, Leigh, that you have
16 lost your moral compass, and you have stopped following the
17 law, and that's becoming a huge problem.

18 THE COURT: All right. Here -- here is the
19 biggest problem. The biggest problem is that as lawyers we
20 are supposed to be the professionals, and as lawyers the last
21 thing we should be doing is having conversations of this sort
22 with clients, members of the general public here. We have the
23 higher duty and the higher calling. We should not be in here
24 disparaging anyone for any purpose. Anything personal needs
25 to be said behind closed doors. That's the difference between

1 a profession and just lay people.

2 Now, the one thing that I have heard that I think
3 may shed some light on this situation as to whether a
4 continuance is to be had is, number one, whether that new baby
5 is born. If that new baby was born within two weeks of
6 today's date and is here, we will continue the case because I
7 think he would have a responsibility to the newborn. If
8 that's not the case, we're going to go ahead with the hearing
9 today.

10 So, Ms. Wolfenden, I'm going to ask you to go ahead
11 and contact your client and get something in writing, if he
12 would fax it here, so that everyone will be aware of what's
13 going on.

14 MS. WOLFENDEN: That's fine, Your Honor. I
15 don't have his phone number with me. I'm not sure my
16 paralegal is at the office yet. I'll see if I can contact
17 him.

18 THE COURT: Okay.

19 MS. WOLFENDEN: If not, we may have to ----

20 THE COURT: Well, let me know as soon as you
21 can.

22 MS. LYONS: I have his phone number.

23 THE COURT: Okay. Ms. Wolfenden, I think
24 Ms. Lyons has the number.

25 If you don't mind, ma'am, if you will share that ---

1

2

MS. WOLFENDEN: Oh, that'd be great.

3

MS. LYONS: Sure.

4

MS. PEEK: Your Honor, while they're

5

getting that done, Ms. Lyons and I agreed that it's unlikely

6

that we will get up with Dr. Reynolds today. It usually takes

7

him at least 24 hours to get back ----

8

[The recording stopped abruptly at 10:30 a.m. and restarted at

9

1:29 p.m., March 23, 2009.]

10

THE COURT: Anything you want to say

11

[indecipherable]?

12

MS. PEEK: Well, Your Honor, I had thought

13

that we were getting a document about the birth of the baby.

14

THE COURT: That's what I asked for, yes,

15

ma'am.

16

MS. WOLFENDEN: Your Honor, I believe this -- if

17

you will remember, I began by stating that Mr. Lyons could not

18

miss work today because it was putting his job in jeopardy,

19

and then I told the Court in addition that I was under the

20

impression that his wife had already given birth or would be

21

giving birth shortly and that I thought that would also happen

22

[indecipherable]. If you will see here, his commanding

23

officer states his spouse is also currently expecting to give

24

birth within the next couple of weeks which will also cause

25

him to be absent from work, which I believe is consistent with

1 the arguments that I made to this Court. I would reiterate,
2 Your Honor, that before we even get to this point this Court
3 has to address what the law is in this state. We have the
4 Rules of Civil Procedure for a reason. It is not legal -- it
5 is not following the law if Ms. Peek provides me with notice
6 of calendar call but then goes to calendar call, picks a date
7 without my input, and then does not provide me with notice.
8 That is -- that's not legal.

9 THE COURT: All right. If you will copy
10 that section of the Rules of Civil Procedure and leave it with
11 one of the administrative assistants, I'll review during
12 lunch.

13 Anything further you wish to say?

14 MS. PEEK: The only thing that we would
15 have to add to this is that my client tells me that Mr. Lyons
16 is separated from his wife now, that the wife is actually
17 living with her parents and he has a new girlfriend, which
18 makes me wonder about the veracity of he's currently expected
19 to give birth within the next couple of weeks which will cause
20 him to be absent. I don't have any information about how they
21 might work together during that birthing process. I know I
22 personally might not want to have him around or ----

23 THE COURT: No, I understand.

24 MS. PEEK: ---- if we're not together and
25 he has another girlfriend.

1 MS. WOLFENDEN: Your Honor, that is not true,
2 and it is completely unfair for Ms. Peek to bring that up when
3 my client's not here to defend himself. Plus, I would argue
4 again that all of this is a distraction away from the fact
5 that we have rules of court that state that an attorney has an
6 obligation to provide another attorney with five days notice
7 before any motion is heard. I'd be more than happy to, you
8 know, get my hands on the Rules of Civil Procedure to find
9 that rule.

10 THE COURT: Sure. Just go right ahead, and
11 I'm sure somebody on my staff will be happy to make a copy.
12 All right.

13 MS. WOLFENDEN: All right. So, we're coming
14 back after lunch?

15 THE COURT: Yes. I have not had but about a
16 20-minute break all morning, so I have no choice but to at
17 least ----

18 MS. WOLFENDEN: Okay. I also -- I wanted to
19 make one other quick point. While I was waiting for the fax,
20 Mindy -- I saw her in the hallway and Mindy became very, very
21 angry with me. She told me that I had intentionally -- or,
22 that I had told the Court this morning that Judge Buckner had
23 intentionally left my name off the e-mail. I wanted to bring
24 Your Honor's attention to paragraph three. I say, "The
25 Honorable Joseph N. Buckner, Chief District Court Judge,

1 informed Plaintiff's counsel on March 4th of the date of
2 calendar call but did not inform Defendant's counsel." I
3 never at any time said that I was intentionally left off the
4 e-mail, so I'm very concerned because I don't know where Mindy
5 got that information.

6 THE COURT: Very well.

7 [The hearing recessed at 1:35 p.m. and reconvened at 2:58
8 p.m., March 23, 2009.]

9 THE COURT: All right. Yes, ma'am.

10 MS. WOLFENDEN: Thank you, Judge. The law that
11 is applicable to this situation is found in Rule 6 of the
12 North Carolina Rules of Civil Procedure, if I could read it
13 into the record? I believe it's 6B, "A written motion other
14 than one which may be heard ex parte and notice of hearing
15 thereof shall be served not later than five days before the
16 time specified for the hearing"; and, then if I could read --
17 this is also a custody case if I am not mistaken.

18 Ms. Peek said her client came here today to address
19 something regarding visitation, which obviously is synonymous
20 with custody, and it says, "Motions for support of the minor
21 child in a pending" -- let me take that part out. That's
22 motions for support of the minor child. This is under 50-
23 13.5(d)(1), "Motions for the custody of the minor child in a
24 pending action [indecipherable] 10 days notice to the other
25 parties and [indecipherable] compliance with G.S. 50A-205."

1 I think the law is clear and established. I think
2 that every attorney in this state knows and is fully aware
3 that you can't bring someone into court without giving them
4 five days notice. It is the obligation of the attorney. It's
5 not the obligation -- it's the obligation of the attorney who
6 has served the motion, and that was Ms. Peek, and if you look
7 in the court file, while there is a notice of hearing for
8 calendar call, I would argue to the Court that after she
9 unilaterally set for hearing, she had an obligation to follow
10 the Rules of Civil Procedure.

11 Taking a look at [indecipherable] calendar briefly
12 before Your Honor came into the courtroom, I do see that of
13 the four cases that were set for hearing, we did in fact set
14 two. She wanted to be heard on them, and then the other two
15 she did not [indecipherable], and those are my cases ----

16 THE COURT: Now, is that the information I
17 asked for you to get to me over lunch, ma'am?

18 MS. WOLFENDEN: Yes. Your Honor, with all due -
19 - complete due respect to the Court ----

20 THE COURT: Yes.

21 MS. WOLFENDEN: ---- I -- well, I would ask Your
22 Honor that if in fact when there -- actually one of my pending
23 motions before the Court is actually a change of venue because
24 neither of the parties live in Durham County. Of course
25 that's my -- my client's -- [indecipherable] lives with the

1 mom, and they lived in Durham County for quite some time, and
2 my client doesn't live in Orange County. But with all
3 complete and humble due respect to the Court, I'm
4 uncomfortable with what has happened here today. I do not
5 mind, Your Honor, that you sent me on an errand to -- to find
6 something. I mean, of course, that's legitimate, and I come
7 back and it -- it says -- it addresses the birth of the child,
8 and there is a comment about this not being sufficient for the
9 Court, and then I'm sent on another errand to find ----

10 THE COURT: Okay. Hold -- wait a minute.
11 Help me understand what you're saying here. I do know that I
12 said I thought the important thing -- the deciding factor in
13 this case was whether the child had been born or not. Did I
14 not say that?

15 MS. WOLFENDEN: Yes, ma'am.

16 THE COURT: Okay. Now, I also said if that
17 child was two weeks old or less, but having been born within
18 two weeks prior to today, that we would continue the case
19 because I think that the father is due that as some form of
20 paternity leave. I also asked for you to get us confirmation
21 that the child had been born because that was the deciding
22 factor for me. Now, I need you to help me understand what was
23 confusing about that or what you didn't understand such that
24 you think that you went on a chase and then you came back and
25 was sent on another chase. Help me understand what was

1 unclear.

2 MS. WOLFENDEN: Sure, I will. This is how it
3 feels to me. It feels to me that this Court is trying to find
4 me wrong and Ms. Peek right.

5 THE COURT: Okay. What was said to lead you
6 to believe that?

7 MS. WOLFENDEN: That I went and got the document
8 that Your Honor requested and, yes, there was some additional
9 information in there. It also addressed when the child would
10 be born, and when we came back, Your Honor then asked me to go
11 copy case law.

12 THE COURT: And why did I ask you to do
13 that?

14 MS. WOLFENDEN: Well, I have no idea. I ----

15 THE COURT: I asked you to do that because
16 you kept relying on that as the reason for your argument. Are
17 you suggesting to this Court that I do not have the right or
18 authority to ask you to support your arguments to me? Tell me
19 exactly what you're saying.

20 MS. WOLFENDEN: I absolutely believe that Your
21 Honor has the right to ask me to support my arguments with the
22 law.

23 THE COURT: Okay. Is that not what you
24 brought here?

25 MS. WOLFENDEN: That is correct. It's the well-

1 established Rules of Civil Procedure.

2 THE COURT: Okay. So what, in asking you to
3 do what a Court has a right to do, number one; and number two,
4 what should be available anytime you are making a argument,
5 makes you feel that I am some way suggesting that Ms. Peek is
6 right?

7 MS. WOLFENDEN: Because, Your Honor, the prem --
8 the law regarding notice of hearing ----

9 THE COURT: Uh-huh.

10 MS. WOLFENDEN: ---- is a fundamental Rule of
11 Civil Procedure.

12 THE COURT: Okay. What about that?

13 MS. WOLFENDEN: This is something that I believe
14 after having practiced for 10 years I am very aware of, and I
15 believe that you -- you are also an experienced jurist and
16 that you are very aware of, having practiced family law and
17 having been in the courtroom for all these years.

18 THE COURT: Okay.

19 MS. WOLFENDEN: So, I think knowing that you are
20 aware of the law, continuing this so that -- I mean, in
21 effect, Your Honor, the law is what the law is.

22 THE COURT: It is.

23 MS. WOLFENDEN: Yes, that is correct, and I have
24 been here since 9:00 a.m. this morning trying to focus this
25 Court on the law so that my client's time is not wasted and so

1 that Ms. Peek's time is not wasted and her client's. This is
2 a long time to address a very simple issue, which is the
3 fundamental issue before this Court hears any hearing and that
4 is five days notice is required. How we got off on children
5 being born ----

6 THE COURT: You brought up the fact that
7 your client is expecting or has a newborn. You brought it up.
8 I wouldn't have known. I don't know your client from anyone
9 else. There's no way I could know that. You brought it up.
10 You also brought up this notice thing. The first thing I
11 wanted to know was whether the child is actually born or not,
12 and I let you all know that if that child is two weeks old or
13 less that the case would be continued. The information I got
14 -- I was expecting something from a medical facility, but I'll
15 concede I didn't ask for that, but the notice that I got is
16 from an Army base. Number one ----

17 MS. WOLFENDEN: His employer.

18 THE COURT: His employer ----

19 MS. WOLFENDEN: Correct.

20 THE COURT: ---- that talks about birth
21 within the next couple of weeks. So, that means that the
22 child has not been born. That means the child is not two
23 weeks old or less.

24 MS. WOLFENDEN: That is correct.

25 THE COURT: Okay. So ----

1 MS. WOLFENDEN: And that aside though, Your
2 Honor ----

3 THE COURT: No, no, not that aside. Not
4 that aside. Here is the thing. I said how I would rule,
5 okay. If the child is two weeks old or less the case would be
6 continued. This confirms that the child is not two weeks old
7 or less. The child has not been born. You are talking about
8 the rules of evidence ----

9 MS. WOLFENDEN: No. No.

10 THE COURT: ---- the Rules of Civil
11 Procedure. I'm sorry; you're right, the Rules of Civil
12 Procedure and, yes, I do have the right to read it because the
13 bottom line is this, nobody in this room knows the law. We
14 know what we think it says, but the purpose of us having
15 statutes readily available to us and Rules of Civil Procedure
16 readily available to us is for us to reread them, to reread
17 them. Anytime that you think that you know everything that's
18 in those books, number one, you're wrong; number two, you need
19 to always be at a point where you can reread them and put them
20 in the context of, number one, your argument; and, number two,
21 for a judge the appropriate context before you enter a ruling.
22 That's the purpose of it.

23 MS. WOLFENDEN: And I respect that, but if the
24 deciding factor for the Court was two weeks that this baby had
25 been born or not been born, et cetera, then I'm not entirely

1 clear -- it is not clear to me why then you sent me to look
2 for the rule of law.

3 THE COURT: Because I wanted to see it for
4 myself. That's why. That's why I asked you to get it for me
5 over lunch, and I just explained why because it would be
6 remise of me not to read it again for my -- myself regardless
7 of what I think it says, regardless of what I know it says.
8 That's the whole point of us bringing case law to court.
9 That's the whole point for us having all of this stuff here
10 available to us.

11 MS. WOLFENDEN: I agree. That is why when I
12 came into court this morning, the first words out of mouth
13 were that Leigh's motions had not been properly noticed. That
14 is where I began, and Leigh started saying a whole bunch more.
15 I started adding to that, but the issue that I felt was the
16 only issue before this Court is what the law is regarding
17 noticing motions for hearing, and I continue to argue that
18 Leigh did not properly do that.

19 THE COURT: Okay; and, I understand that.
20 Now, here is where this falls within the context of this case.
21 I know when you all were before me last time you had a motion
22 to continue because you wanted to file a Rule 11 or ask for
23 attorney's fees or something; is that not correct?

24 MS. WOLFENDEN: That is not correct.

25 THE COURT: Okay. Find me the recording

1 from -- what date were we here last?

2 UNKNOWN FEMALE: Do you remember what day ----

3 THE COURT: February.

4 UNKNOWN FEMALE: I have -- I have the calendar
5 here.

6 THE COURT: You did not ask to continue this
7 case so you could file either a Rule 11 or ask for a ----

8 MS. WOLFENDEN: Absolutely not. Absolutely not.
9 What I told the Court in chambers is that ----

10 THE COURT: No, no. I'm talking about in
11 open court. I'm not talking about chambers.

12 MS. WOLFENDEN: Your Honor, that is not true.
13 We were in chambers a lot more than we were in open court..

14 THE COURT: But I'm not focusing on that. I
15 want to make sure that you understand what I'm asking of you,
16 and I want you to understand what I'm saying. Is it not true
17 that when the case was called you did not ask for a
18 continuance?

19 MS. WOLFENDEN: That is not true. My client was
20 there. I said, "We were ready to proceed." Ms. Peek began to
21 tell the Court that because of the legal proceedings against
22 her, she needed to seek advice from her attorneys and or she
23 was talking about seeking an injunction, at which point we
24 were called into chambers. Once we got into chambers we were
25 discussing the Rule 11. We didn't want to proceed. She felt

1 threatened. I said I would take that off the table, and then
2 I can't really ----

3 THE COURT: You would take the Rule 11 off
4 the table?

5 MS. WOLFENDEN: I believe I did say that.

6 THE COURT: Uh-huh, and when was that put on
7 the table?

8 MS. WOLFENDEN: It was put ----

9 [The recording stopped abruptly at 3:12 p.m. and restarted at
10 4:07 p.m., March 23, 2009.]

11 THE COURT: All right. Now, Ms. Wolfenden,
12 you were saying that you did not make a request of this Court
13 in February for a continuance to allow you to file a Rule 11
14 sanction for -- to otherwise seek attorney's fees from Ms.
15 Peek?

16 MS. WOLFENDEN: Not -- I had already filed my
17 motion.

18 THE COURT: You had already filed your
19 motion?

20 MS. WOLFENDEN: Uh-huh.

21 THE COURT: And you were saying you all were
22 ready to proceed in February?

23 MS. WOLFENDEN: That's what I remember, yes,
24 ma'am. We were ready to proceed, but it was Leigh who didn't
25 want to move forward, and I was -- excuse me, Your Honor, I

1 should stand -- and my client was upset that he didn't get
2 heard that day, and I was upset for him that we didn't get
3 heard that day, and that's why Your Honor put it back on.

4 THE COURT: For the March calendar call.

5 MS. WOLFENDEN: Right.

6 THE COURT: And you are saying under this
7 rule with me ordering that the case be put on the March
8 calendar call, Ms. Peek had the duty and obligation to send
9 you a notice of hearing?

10 MS. WOLFENDEN: Absolutely, Your Honor. She did
11 -- I believe, sent a notice of hearing for the calendar call,
12 but you know we always do that. I mean, that's what attorneys
13 do, but she has a further obligation when I'm not at calendar
14 call to notice me for hearing. In fact, Your Honor I don't
15 know how many calendar calls -- you know, I know you've sat in
16 on a few, but I've sat in on ten times -- hundreds, and I
17 don't know what Judge Buckner said that day. I'll get that --
18 I'll get that recording. Maybe that would be an interesting
19 thing to listen to, but what he has always said to me is when
20 one attorney is not there and the other is and a court date is
21 chosen unilaterally, the last thing he says to you as you're
22 walking out the door is, "Now, you have to notify opposing
23 counsel." I mean, he's always said that to me and I've always
24 done it.

25 Now, I had called Sarah, as I said, early Wednesday

1 morning, but it was too late for me to get up to calendar call
2 at that point in time. I don't want to drag Sarah into this
3 because ----

4 THE COURT: No, I understand.

5 MS. WOLFENDEN: No. Everybody loves Sarah, but
6 I do know that I told Sarah, you know -- and I know that Sarah
7 would tell the Court that I asked her to make sure that Judge
8 Buckner knew that I had not received notice, and she said that
9 she would do that, and I know Sarah and she did do that. I
10 trusted her to do that.

11 Why Leigh would pick some court dates for -- you
12 know, why she would pick court dates for two of the hearings
13 that she wanted to get hear -- heard on -- and by the way, I
14 also had filed a motion to continue in the other -- in the
15 other case as well. So, I had -- this is not the only case
16 where I had to file a motion to continue, and I -- you know,
17 Your Honor, I would like to add one more thing. There is a
18 Rule of Professional Conduct, and the rule basically says
19 this, that even though you go into court and there is a
20 statute or a law that's going -- that is against your client.
21 It's against your interest and you know what that rule is, as
22 hard as it is and as much as kills attorneys to do it, you
23 have an obligation not to remain silent. You must tell the
24 Court about a case, a statute or what have you that you are
25 aware of.

1 Leigh knows -- I mean, the rules that you asked me
2 to go get, that's fine, but Leigh's been practicing longer
3 than I have and she knows these rules. She knows five days is
4 required, so while I don't mind going to get these things, I
5 do mind that she stays silent because, again, this is -- I
6 would not do that. That's just something I wouldn't do. She
7 knows Rule 6 as well as I do. She knows that you get 10 days
8 notice on a custody hearing. All of us family law attorneys
9 know it, and for her to just stand there -- it's the silence
10 that bothers me because I think that is just as unethical as
11 stating an opposite position. I -- I -- I don't think that's
12 right for her to just stay silent even though of course she'd
13 like to be in the right, you know. We all would, but that's
14 not the way it works. We're here to follow the law.

15 THE COURT: Yes, ma'am?

16 MS. PEEK: Your Honor, I guess I'd first
17 like to address this chronologically, and I do want the Court
18 to be aware that we filed a notice of hearing in this case
19 last year. It was November 10th of 2008 when I did a notice
20 of hearing to bring on all outstanding motions and matters on
21 December 1st, 2008 at 9:00 a.m. or soon thereafter as counsel
22 can be heard. Now that court date was set for February 12th,
23 and I don't think it was set for February 12th in December,
24 but I think it was set at the January calendar call for
25 February 12th if I'm correct.

1 When we came to court in February -- Ms. Wolfenden
2 has made some allegations today about what was said and what
3 was not said, and I haven't listened to the tape from then,
4 but my recollection is that I stood up and said there were --
5 there was more than one motion on but that I would like the
6 Court to address the temporary custody issues first, and I
7 believe Ms. Wolfenden at that point said that there were two
8 motions on, one was the custody motion and the other was a
9 motion for attorney's fees and that she wanted a continuance
10 if we wanted to hear the motion for attorney's fees so that
11 she could file Rule 11 sanctions, that it had come to her
12 attention that during that June 4th date that I had not told
13 the Court that the parties are still in Orange County custody
14 mediation and she wanted to, you know, get a chance to get the
15 tape from June 4th as well as to talk to Judy Redland. I
16 don't believe I spoke after that. I might -- I don't think I
17 did, and I'd love to know what the tape says because we went
18 into chambers after that. When we came out of chambers the
19 case, of course, was put back on the March calendar by Your
20 Honor.

21 THE COURT: Uh-huh.

22 MS. PEEK: And then subsequent to that I
23 received a letter from Ms. Wolfenden about the attorney's
24 fees, and because of receiving a letter from her about the
25 attorney's fees I filed, on February 24th, 2009, a notice of

1 hearing in this manner that we would bring all claims for
2 attorney's fees on for hearing on March 2nd, 2009 or soon
3 thereafter as counsel can be heard. I believe that that meets
4 the requirement under Rule 6. I don't think I had to do that
5 because I think it was previously noticed for the December
6 calendar call by the Court, but -- well the Court in February
7 had put it on the March calendar call. I think I followed the
8 text.

9 THE COURT: That was my order. That was my
10 order.

11 MS. PEEK: I think it's [indecipherable],
12 but because of the letter, I filed another notice of hearing
13 to make sure that we were hearing our motion for attorney's
14 fees, and that was set for March 2nd. I've already addressed
15 what happened at that calendar call because there was a snow
16 day.

17 I do want to reiterate that at no time was I
18 contacted by the Court about that court date. I did, however,
19 attend that calendar call, and I did have four cases with Ms.
20 Wolfenden, but I believe the first case that was called was
21 set by Judge Buckner for March the 11th, and that case was
22 heard. I don't know if this was the second or third one, but
23 I don't believe it was the second one because the -- there
24 were three cases left and of that -- of the three, I knew I
25 wanted to have this heard by Your Honor because you had put it

1 on, and I don't even -- I don't know how many court dates you
2 had available, but I think this was pretty much it from the
3 calendar call because I think Wiliford [phonetic] was set last
4 week and they didn't want us to put things on top of that, so
5 I -- I just took the date.

6 In the other two cases, I had the Kline [phonetic]
7 matter with Ms. Wolfenden and my co-counsel wasn't there, and
8 there was some -- I knew there was going to be some superior
9 court stuff happening in that case this month, and so I went
10 ahead and just held it open. The other matter is the
11 Barnimore [phonetic] matter, and I held that matter open also
12 because it's the subject of a superior court action that Ms.
13 Wolfenden has filed against me for malicious prosecution, and
14 my attorney ----

15 MS. WOLFENDEN: Excuse -- I didn't file anything
16 against you.

17 MS. PEEK: You -- you have filed it with
18 your signature on behalf of Mr. Layton against me.

19 MS. WOLFENDEN: Thank you.

20 MS. PEEK: And -- and anyway in that case
21 my lawyer, David Lewis, has informed me that I have to
22 withdraw. He thinks it's a direct conflict, so I can't
23 continue in the district court case.

24 THE COURT: Right. That makes sense.

25 MS. PEEK: And so I did. I held that open,

1 too, and I didn't inform anybody of that because, you know, I
2 hadn't got back to my client yet to tell her that that was
3 what he had said.

4 But I am unaware of any Rule of Civil Procedure that
5 requires me to re-notice a matter after the calendar call. We
6 were all supposed to be there. As a matter of practicality,
7 the Court has the calendar and it was available for all. At
8 some point I have to quit coming to court and re-noticing
9 things and writing letters to Ms. Wolfenden on behalf of my
10 client. She's there all day, and I know she wants to be
11 heard, Your Honor, but she should have been at calendar call.
12 Since she wasn't at calendar call I believe that she should
13 have found out what happen with those four cases, and to say
14 that I haven't noticed it for hearing under Rule 6 is
15 completely disingenuous because there is no rule that you have
16 been presented or that I know of that requires me to re-notice
17 a matter after it's set at calendar call in the absence of an
18 opposing attorney or in the absence of an opposing client.

19 I could have just had this hearing that day. I
20 could've just stood up right there and said, "I want to hear
21 it right today." I could've had it the next day. I gave her
22 ample time to come back from wherever she was, 'cause I didn't
23 know where she was, to find out, and then when she appeared in
24 this courtroom on March the 11th, I certainly did not expect
25 her to come up today and hand me a motion to continue, by the

1 way which didn't -- wasn't given to me with a five-day notice,
2 you know. I -- I got it at 8:30 when I walked in the
3 courtroom this morning.

4 THE COURT: Is that true, Ms. Wolfenden?

5 MS. WOLFENDEN: Your Honor, Leigh is completely
6 rewriting history, but the most important thing I want to
7 focus on is this. We have a court file. We have rules of
8 law. If Your Honor will look in the court file ----

9 THE COURT: Yeah, I understand that, but my
10 question is, is it true that you did not give her five days
11 notice for your motion to continue.

12 MS. WOLFENDEN: I just found out -- it is true
13 because she -- her motions aren't noticed for hearing either.
14 Mine is the only one that is. Right now mine is the only
15 motion that has been noticed for hearing on this day. The
16 only reason why I didn't notice it sooner was because it
17 wasn't until Friday -- after I contacted Leigh on March 17th
18 and she did not hear back -- or -- and she did not respond to
19 me, then I got in touch with Sarah. So, it's correct that
20 another motion was noticed and heard on March 11th over my
21 objection, and I will tell Your Honor that my client -- we are
22 waiting for the order to be entered and that is going up to
23 the Court of Appeals for that exact reason, that it was not
24 properly noticed.

25 Leigh is right, could she get heard on March 2nd?

1 Yes, she could have. I mean, we all know we don't hear
2 contested hearings on March 2nd, and I'm sure her client was
3 not in court on March 2nd, nor was her client in court on
4 March 4th, but when she went back to court on the 4th, there
5 was a notice of hearing in the court file since March 2nd.
6 Well, that's not good anymore. That has expired, and that was
7 expired on March 4th, and when she then stands up in court in
8 front of the Judge and picks another court date and she knows
9 I'm not there and -- and she can't make the statement that I
10 should have been there. I made every step to get there. At
11 the point in time when she unilaterally, without any input
12 from me, picks another court date, those Rules of Civil
13 Procedure kick back in, and she has an obligation to inform me
14 of today's court date.

15 Leigh was surprised to see me today, I'm sure, with
16 my motion to continue. She came to court on June 4th with her
17 client. They were very pleased that I was not there and my
18 client wasn't there. Even though the parties were in full-
19 blown mediation, they proceeded as if they were ready to go
20 forth with the custody hearing, and then she hounded me for
21 attorney's fees associated with that. I'm not in the habit of
22 paying attorney's fees when opposing counsel is engaging in
23 legal games. Today is another -- it's a continuation of a
24 legal game, but in this circumstance I -- I, you know, the law
25 is clear. The law is cut and dry. There is a notice of

1 hearing in there for March 2nd. That didn't happen. There is
2 no notice of hearing in there for this day, not five days old
3 or 10 days old. There is a notice of hearing in here today
4 for my motion to continue. Did she receive five days notice?
5 No, I didn't have time to give her five days notice. Did she
6 have since March 4th time to give me notice? Absolutely. It
7 takes me five minutes. It takes her five minutes to run a
8 notice of hearing off on our computers. She lives a lot
9 closer to the courthouse -- or works -- than I do and she can
10 trot someone over here to file it and fax it to me. We do
11 this all the time. This is how attorneys, not just working
12 this district, but throughout the state -- we follow the law,
13 and in this case Leigh did not follow the law.

14 THE COURT: Ms. Peek, you said your client
15 was wishing to be heard from?

16 MS. PEEK: I believe she would like to be
17 heard, Your Honor. She's been here all day.

18 MS. WOLFENDEN: I would just object on the
19 record. That's fine because I'm sure if my client was here he
20 would also like to be heard.

21 THE COURT: Yes, ma'am.

22 MS. LYONS: I would like to say that I've
23 appeared in court, and they have brought me to court in South
24 Carolina, in North Carolina. He has two attorneys. He pays
25 Ms. Wolfenden. He pays one in South Carolina. I have missed

1 school. I have missed work. I have missed plays. I have
2 missed picking my child up from school. I have done
3 everything I can to make sure that I try to control what's
4 going on with this. There are so many things that are going
5 on in the background that you never hear about. Ms. Wolfenden
6 has brought us to the court and every time when we have come,
7 she's come up with something new why we can't be heard, why we
8 have to postpone, why it has to be continued over and over and
9 over. She -- I don't know why she's doing it. For me
10 personally, it's wearing me down. I can't afford it. I can't
11 keep missing school. I missed a whole day of school. I had
12 to call my job twice. I'm supposed to be there at 12:00. I
13 had to call them and tell them I couldn't come. When we went
14 to break, I had to call them and tell them I to come back, so
15 I'm still missing some work. I've missed all kinds of things.

16 Mr. Lyons, he is a Sergeant in the Army. He is a
17 recruiter. This is his Company Commander. This is not his
18 Station Commander. His Company Commander, if anybody knows
19 about military, as I was a military wife for seven years, I'm
20 not fully sure exactly where this person is. This person is
21 probably in Columbia. He's in Florence, so this person here
22 is not the person directly over him. This is not his direct
23 supervisor. She would not know or be able to release him to
24 say he can't come. He was here this weekend.

25 I also had a conversation with the wife. I had a

1 direct conversation with the wife and asked her today, "Are
2 you two together?" and she said, "No, we're working on it."
3 The baby is due in three weeks. She's at the hospital right
4 now with her mother, not with her soon-to-be probably ex-
5 husband. I am tired that -- his wife told me that Ms.
6 Wolfenden notified him sometime this weekend, maybe Friday,
7 Saturday or Sunday. I don't know when she found out, but he's
8 come to every single thing that he's been told to come to, and
9 he's called me and said, "Betsy didn't tell me I had to be
10 there. You didn't call me and tell me I had to be there."
11 It's not my job to make sure he knows he has to be here; and,
12 he will call me this week, or e-mail me, or text me and say,
13 "You knew and I didn't find out until this day, and it's not
14 fair to me 'cause I should have been there," 'cause he usually
15 stays, and it's been repetitive. It continues to go on, and
16 when, for some reason -- maybe Ms. Wolfenden feels he
17 shouldn't be here 'cause it's to their benefit, she either
18 will not tell him in time for him to come, which is what
19 happened with this, or she will tell him so late that he can't
20 come.

21 I do not know what's going on. I don't know if it's
22 a money thing for her, 'cause it can't be for me right now. I
23 don't have this type of thing. I've tried to have everything
24 plausibly heard when they called us back to court. She's
25 actually requested we come. I don't know that I'm not

1 supposed to come. I don't know that. If you call me and say,
2 "We want to settle visitation," I'm happy; I want to. I have
3 been up and down with this visitation. He comes when he wants
4 to. He leaves when he wants to. He picks her up where he
5 wants to. He -- and finally this time, as he finally came out
6 of what's a major issue [indecipherable] said he tried to kill
7 himself. He absented himself from his child's life for six
8 months. I have e-mails, I have text messages, "Come see your
9 child. I don't want you to take her." He absented himself,
10 and I understand maybe he needed to, to make sure that he was
11 feeling better and he could better deal with this. I had to
12 tell my child for six months, "Daddy's going to come when he's
13 okay." I had to be the big person [indecipherable due to
14 weeping]. I'm sorry.

15 No one has asked me -- no one has asked me. This is
16 the first time I've had a chance to talk except for in
17 mediation, and even in mediation, I had a five-page document
18 because I knew it would be like this. Judith took my five-
19 page document and made it two and a half pages. It's barely
20 three pages, including the signatures -- because I knew it
21 would be this way because he's in the military. He chose to
22 leave the marriage, and he chose to step out and do what he
23 wanted to do. He got remarried before a year was over. He
24 has a new baby, hasn't even been married for a year. All of
25 this craziness is going on with him. He brings it back to me,

1 and it just keeps my life and my child's life in turmoil.

2 My daughter came home from him this weekend and
3 cried. She does it every weekend because I can't tell her
4 he's going to come back in two weeks. I tell her,
5 "Sweetheart, we have no control. If daddy is feeling good and
6 he's okay and he has money and whatever is coming up with him"
7 -- whatever he tells her I back it up. He doesn't have money.
8 "He can't come, Sweetie; he doesn't have the funds," and I
9 have an e-mail that says, "I can't afford it." I have e-mails
10 that say all this kind of stuff, and I have to go back to my
11 child and I have to tell her these things, but every time I
12 have to come back here to do something else that doesn't get
13 settled, I have to go back unsure of what the next step is.

14 I just want the steps to end. I want the visitation
15 to be settled. I want the child support -- he's taking me to
16 child support, and they dug, and dug, and dug until they
17 finally got enough information to have it reduced, and I
18 didn't get a chance to speak to the judge myself and say,
19 "Everything he's asked for I brought. I sent it in, so there
20 was nothing that I was hiding. If I were hiding it, I
21 wouldn't have sent it." But I don't have any representation
22 in South Carolina. I've been to mediation five times here.
23 I've been to court three or four times here. I've been to
24 court four times there. When can this end?

25 And now he's saying, from someone who probably

1 doesn't, you know, really know who he is, that he can't come
2 ever again. Where does that put this if he can never come?
3 This, to me, says, "I cannot" -- "any further days." He can't
4 miss any further days.

5 THE COURT: Well, no. I can't go by this if
6 he can't ever come again.

7 MS. PEEK: Your Honor, finally, to return
8 to the legal argument -- and I know she does appreciate being
9 heard because I would have consented to the continuance if I
10 could, but of course she doesn't want it continued.

11 But what it says in Rule 6 is this: "A written
12 motion, other than one which may be heard ex parte" -- and
13 that's not this one -- "a notice of hearing shall be served
14 not later than five days before the term specified for the
15 hearing, unless a different period of fixed by these rules or
16 by order of the Court." And I would say to this Court that my
17 interpretation would be that all of this just falls in line
18 because when we were in court in February on the 12th, this
19 Court ordered it to be heard at calendar call, and calendar
20 call was not on the 2nd; it was on the 4th, and we were
21 supposed to be there, and I think that you follow orders of
22 the Court, and that's how I interpret Rule 6.

23 MS. WOLFENDEN: Your Honor, you absolutely did
24 not order it to be heard at calendar call. Your Honor would
25 never say such a thing because you know that we never hear

1 contested hearings at calendar call. I would ask that we
2 listen to the tape.

3 THE COURT: I asked that it be placed on the
4 calendar.

5 MS. WOLFENDEN: That's exactly right, so that a
6 court date could be chosen. Rule 6 applies in this case.
7 There is no exception to that rule. Your Honor never chose
8 March 23rd. I can assure Your Honor if you had I would have
9 been here today, with my client, ready to go.

10 While I have some feelings for Ms. Lyons' plight, I
11 would argue to the Court that she came on June 4th for
12 nothing, and that was her choice and Ms. Peek's choice. The
13 parties were mediating, and here is the parenting agreement
14 that was a result of that. As far as her going on as if we
15 are now arguing custody again, what resulted from coming into
16 court on February 12th was that I had submitted to the Court
17 an affidavit from my client's therapist. I find my client to
18 be an extremely devoted father. I then encouraged Leigh --
19 Leigh said to Your Honor, "I'd like to call the therapist,"
20 and I in fact sent her a letter, and I believe it's in the
21 court file. I filed that letter, and that letter says,
22 "Leigh, please call that therapist," and she did and she spoke
23 to Mr. Ayers and then she communicated back with me and said
24 that any concerns that she had about my client as a father
25 were resolved from that conversation. The only thing that

1 went back on the court calendar, by Ms. Peek's most recent
2 notice of hearing, was all pending motions related to
3 attorney's fees, and that was the only thing that went back on
4 the March 2nd calendar. The rest of what she says and what
5 she remembers from February 12th, I -- that's not correct, and
6 I think if we sat here and listened to it, it would refresh
7 her memory and she would remember what happened in court that
8 day.

9 THE COURT: All right. Well, it's 4:33 now,
10 so it's not practical for us to do anything, unfortunately,
11 today; however, I am ordering this case, everything that needs
12 to be heard in Lyons v. Lyons will be heard on April 8th, no
13 further continuances.

14 MS. WOLFENDEN: Will Your Honor prepare an
15 order, or shall I prepare an order?

16 THE COURT: I'll prepare an order.

17 MS. WOLFENDEN: You will? Okay. April 8th,
18 2009 at 9:00 a.m., Your Honor?

19 THE COURT: Uh-huh.

20 [The hearing recessed at 4:34 p.m., March 23, 2009.]

21 [END OF TRANSCRIPT]

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STATE OF NORTH CAROLINA
COUNTY OF ORANGE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 07 CVD 1260

LYONS,]
Plaintiff]
V.]
LYONS,]
Defendant]
_____]

CERTIFICATE

I, Dennis R. Coley, Jr., having been assigned to transcribe the above-captioned hearing from March 23, 2009, do hereby certify that said hearing, pages 1 through pages 50 inclusive, is a true, correct and verbatim transcript of said proceeding to the best of my ability.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.



Dennis R. Coley, Jr., CVR
Court Reporting Coordinator
Administrative Office of the Courts

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STATE OF NORTH CAROLINA
COUNTY OF ORANGE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 07 CVD 1260

LYONS,]
Plaintiff]
V.]
LYONS,]
Defendant]
_____]

CERTIFICATE OF DELIVERY

This is to certify that the transcript in the above-entitled case was requested of Dennis R. Coley, Jr., on the 25th day of March, 2009, and was delivered and/or mailed to the attorneys/parties indicated below on the 8th day of April, 2009.



Dennis R. Coley, Jr., CVR
Court Reporting Coordinator
Administrative Office of the Courts

Beverly A. Scarlett
District Court Judge
(Delivered via e-mail)

EXHIBIT “C”

LAW OFFICES OF BETSY J. WOLFENDEN

1829 E. Franklin St.
Building 600
Chapel Hill, NC 27514

April 8, 2009

Via Email & *Hand Delivered*
~~First Class Mail~~

PH: 919.932.7680
FX: 866.904.3263

Hon. Beverly Scarlett
Orange County Courthouse
106 East Margaret Lane
Hillsborough, NC 27278

Dear Judge Scarlett:

It came to my attention when I was reading the court file today in Lyons v. Lyons, that Your Honor had ordered a transcript from the March 23, 2009 Hearing. I have reason to believe that the transcript is being prepared to support a Bar complaint against me. I also have reason to believe that during the time I was running for judge against Judge Coleman, Your Honor either brought an anonymous Bar complaint against me or initiated one.

While these matters remain pending, I am respectfully asking Your Honor again to recuse yourself from any of my district court cases in order to ensure that my clients receive fair hearings before an impartial judge.

I am taking the liberty of filing this letter in the Lyons court file. Simultaneously with emailing this letter to you, I am faxing a copy to Attorney Leigh A. Peek and mailing a copy to the Judicial Standards Commission.

Sincerely yours,



Betsy J. Wolfenden

cc: Leigh A. Peek, Esq. via Fax
Mr. Paul Ross, Judicial Standards Commission